

2009 NOV -5 PM 3:5

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIF.

BY DEPT

) Case No.:

09 CV 2487 BEN BLM

) NOTICE OF REMOVAL OF
) ACTION PURSUANT TO 28 U.S.C.
) §1441(b)--(Federal Question)

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PLEASE TAKE NOTICE that Defendants SAXON MORTGAGE SERVICES INC. (“Saxon”) and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS (“MERS”) hereby removes to this Court the state court action described below:

1. On September 23, 2009, Plaintiff, JOSE R ORTEGA ("Plaintiff") filed a Complaint against Defendants New Century Mortgage Corp. ("New Century"), MERS, Saxon, Quality Loan Service Corp. ("Quality"), SD Realty Inc. ("SD Realty") and Does 1 - 20 in the Superior Court of the State of California, for the County of San Diego, entitled *Ortega v. New Century Mortgage Corp., et al.*, Case No. 37-2009-00098974-CU-WE-CTL. ("State Court Action"). The Complaint asserts a claim within the jurisdiction of the Federal Court as set forth in 28 U.S.C. § 1331. A true and correct copy of the Complaint is attached hereto as Exhibit "1."

FEDERAL QUESTION

2. The Action may be removed to this Court in accordance with 28 U.S.C. § 1441(b) since this Court has original jurisdiction, pursuant to 12 U.S.C. § 1331, over the federal questions presented in Plaintiff's Complaint. Specifically, Plaintiff's Complaint asserts a claim for violations of the following codified laws of the United States:

- a. The Truth-In-Lending-Act ("TILA") (15 U.S.C. §§ 1601-1666j);¹
- b. The Home Ownership and Equity Protection Act ("HOEPA") (15 U.S.C. § 1639);² and
- c. Federal Reserve, Regulation Z (12 C.F.R. 226.31 and 12 C.F.R. 226.32).³

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¹ Complaint generally.

² *Id.*

³ *Id.*

3. The Complaint's remaining claims assert the following California state law causes of action:

- a. Declaratory Relief;⁴
- b. Wrongful Foreclosure;⁵
- c. Reversal and Cancellation of Foreclosure;⁶
- d. Cancellation of Instruments;⁷
- e. Temporary Restraining Order, Preliminary and Permanent Injunction;⁸

Each of the aforementioned state law claims is transactionally related to, and arises out of, the same common nucleus of operative fact as, the federal claims stated above and thus, each state law claim is subject to the supplemental jurisdiction of this Court under 28 U.S.C. § 1367(a), as being part of the same case or controversy.

4. Defendant *received* a copy of Plaintiff's Complaint on October 6, 2009, and bring this Notice of Removal within thirty (30) days therefrom, as required by 28 U.S.C. § 1446(b).

5. Co-Defendant Quality consents to removal within thirty (30) days of receipt through the Joinder in Notice of Removal filed concurrently herewith.

6. Co-Defendant New Century has filed a petition for Chapter 11 Bankruptcy in the United State Bankruptcy Court for the District of Delaware as case number 07-10419-KJC on April 2, 2007. As a result, prosecution of this action against New Century is stayed. A true and correct copy of the Bankruptcy Court docket is attached hereto as Exhibit "2."

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⁴ Complaint ¶¶ 30-40.

⁵ Complaint ¶¶ 41-44.

⁶ Complaint ¶¶ 45-50.

⁷ Complaint ¶¶ 51-58.

⁸ Complaint ¶¶ 59-66.

1 7. Defendant is unaware if Co-Defendant SD Realty has received or
2 been served with the summons and Complaint in this Action, although reasonable
3 diligence has been performed to ascertain such information, as well as to reach an
4 authorized individual for SD Realty. Also, SD Realty has not appeared in this
5 Action or responded to the Complaint. A true and correct copy of the Online
6 Docket in the State Court Action is attached hereto as Exhibit "3."

7 Respectfully submitted,

8 WRIGHT, FINLAY & ZAK, LLP

9
10 Dated: November 5, 2009

By:

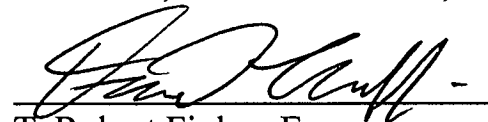

11 T. Robert Finlay, Esq.
12 David L. Chaffin, Esq.
13 Attorneys for Defendants,
14 SAXON MORTGAGE SERVICES, INC.
15 (erroneously named as "Saxon Mortgage")
16 and MORTGAGE ELECTRONIC
17 REGISTRATION SYSTEMS ('erroneously
18 named as "MERS")
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EXHIBIT 1

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

New Century Mortgage Corp, MERS, Saxon Mortgage, Quality Loan Service Corp, SD Realty Inc and all successors in Interest, and does 1-20

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Jose R Ortega

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, pueda perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court Of California,
Hall of Justice, 330 W. Broadway, San Diego, CA 92101-3827

CASE NUMBER:
(Número del Caso):

37-2009-00098974-CU-WE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jose R Ortega 1042 Red Granite RD Chula Vista, CA 91913 619) 947-6618

DATE: SEP 22 2009
(Fecha)

Clerk, by
(Secretario)

B. FOLLIS

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☒ as the person sued under the fictitious name of (specify):
New Century Mortgage Corporation

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☒ by personal delivery on (date): 10/6/09

Jose R Ortega
C/o 1042 Red Granite Rd
San Diego, CA 91813

Plaintiff in Pro Per

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JOSE R ORTEGA,

Plaintiff,

vs.

NEW CENTURY MORTGAGE CORP,
MERS, SAXON MORTGAGE, QUALITY
LOAN SERVICE CORP, SD REALTY INC
AND ALL SUCCESSORS IN INTEREST;
and DOES 1-20

Defendants.

Case No. 37-2009-00098974-CU-WE-CTL

VERIFIED COMPLAINT FOR:

- 1)Declaratory Relief;
- 2)Wrongful Foreclosure;
- 3)Reversal & Cancellation Of Illegal
Foreclosure Barred By Operation Of
Federal And State Law;
- 4)Cancellation Of Instruments;
- 5)Temporary Restraining Order,
Preliminary
& Permanent Injunction.

) LIMITED CIVIL CASE

PLAINTIFF ALLEGES AS FOLLOWS:

I.

CASE OVERVIEW

1) THIS CASE SEEKS:

A. Reversal and cancellation of the wrongful and illegal Foreclosure

VERIFIED COMPLAINT - 1

Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

1 **Commenced against Plaintiff's Home, which Foreclosure was at all times**
2 **Prohibited and barred by operation of both Federal and State law pursuant to:**

- 3 1. The State Nonjudicial Foreclosure Statutes; and
4 2. The Federal Truth in Lending Act ("TILA");
5 3. The Federal Home Ownership & Equity Protection Act ("HOEPA"); and
6 4. U.S. Treasury Regulation Z which enforces TILA and HOEPA ("Reg Z");
7

8 After a **TILA Loan Rescission Notice**, rescinding the Loan, Note & Trust Deed had
9 been timely served in compliance with TILA and Reg Z. The Foreclosure was illegal and
10 wrongful and barred and prohibited under TILA and Reg Z, because the **TILA**
11 **Rescission Notice AUTOMATICALLY RENDERED THE LOAN, NOTE & TRUST**
12 **DEED VOID BY OPERATION OF FEDERAL LAW**, pursuant to the specific and
13 **mandatory provisions of TILA and Reg Z and there was no Loan, Note & Trust**
14 **Deed legally in existence which could be foreclosed upon.**

15
16 **B) Declaratory Relief in the form of a Declaration from the Court that:**

17 A) The TILA Rescission Notice was timely served within three (3) years of the
18 Date of origination of the Loan, Note & Trust Deed.

19
20 B) The TILA Rescission Notice automatically rendered the Loan, Note & Trust
21 Deed
22 Void ab initio by operation of Federal law under TILA and Reg Z.

23 C) As a result of the TILA Rescission Notice, there was no Loan, Note & Trust
24 Deed legally in existence which could be foreclosed upon and there could be no legal
25 or valid foreclosure conducted under the State Non-judicial Foreclosure Statutes.

26 D) As a result of the preceding, the Foreclosure was and is wrongful and was
27 barred by and conducted in violation of Federal law under TILA, HOEPA & Reg Z, and
28

VERIFIED COMPLAINT - 2

Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

1 in violation of the State Non-judicial Foreclosure Statutes and is therefore void, halted,
2 cancelled and set aside.

3 E) As a result of the preceding, any purported Foreclosure Sale conducted or to
4 be conducted in connection with, or to be conducted in connection with, the wrongful
5 and illegal Foreclosure, is equally void by operation of law and is cancelled, reversed
6 and set aside.
7

8 F) As a result of the preceding, any Trustee's Deed which may be issued
9 pursuant to such illegal and void Foreclosure and Foreclosure Sale is equally void by
10 operation of law and is reversed, set aside and canceled.

11 G) As a result of the preceding, the Trust Deed of record was previously voided
12 by the TILA Rescission Notice and is therefore canceled and stricken from the records
13 of the County Recorder of San Diego County.
14

15 H) As a result of the preceding, Defendants and their predecessors in interest
16 and their successors in interest, may not and cannot acquire or perfect legal title to the
17 Home and therefore have no legal standing to file, maintain, continue or obtain
18 judgment in any unlawful detainer case for possession of the Home, and any unlawful
19 detainer case which may be brought by, for or on behalf of Defendants and their
20 predecessors in interest and their successors in interest, is null and void by operation of
21 law; any and all orders and judgments which may be issued therein are null and void by
22 operation of law and are recalled, set aside and vacated; and any judgment and writ of
23 possession obtained therein are null and void and are recalled, set aside and vacated;
24 and any such unlawful detainer case is set aside, vacated and dismissed with prejudice,
25 all ab initio.
26
27
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VERIFIED COMPLAINT - 3

Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

C) Cancellation of Instruments:

5. Cancellation of any Trustee's Deed which may result from such illegal Foreclosure and Foreclosure Sale which were barred by operation of Federal law under TILA, HOEPA & Reg Z following the TILA Rescission Notice, and which were barred by operation of the State Non-judicial Foreclosure Statutes.

6. Cancellation of the Trust Deed of record, WHICH TRUST DEED WAS PREVIOUSLY AUTOMATICALLY RENDERED VOID BY OPERATION OF FEDERAL LAW THROUGH THE TILA RESCISSION NOTICE SERVED IN COMPLIANCE WITH TILA AND REG Z.

D) Issuance of a Temporary Restraining Order and Preliminary & Permanent Injunction:

7) Restraining and enjoining Defendants, any predecessor in interest to Defendants and any successor in interest to Defendants, and any person acting for their benefit or at their direction or instruction:

8. From asserting or continuing to assert any interest in and to the Home or the Loan, Note & Trust Deed; and

9. From continuing, maintaining or concluding any Foreclosure, including but not limited to, holding and concluding any Foreclosure Sale and issuing any Trustee's Deed pursuant to any Foreclosure Sale; and

10. From attempting to file, maintain, or continue, and from filing, maintaining, or

1 continuing and unlawful detainer action for possession of the Home, and from
2 attempting to obtain and/or obtaining any orders and/or judgment, in any unlawful
3 detainer action for possession of the Home; and

4 B) Restraining and enjoining Defendants, any predecessor in interest to
5 Defendants and any successor in interest to Defendants, and any person acting for their
6 benefit or at their direction or instruction, including but not limited to, any law
7 enforcement agency or sheriff's department, from enforcement of any orders or
8 judgment obtained in any such unlawful detainer action; and

9 C) Restraining and enjoining Defendants, any predecessor in interest to
10 Defendants and any successor in interest to Defendants, and any person acting for their
11 benefit or at their direction or instruction, from reporting, maintaining, or continuing any
12 adverse or negative report or information with respect to the Loan, Note & Trust Deed to
13 any credit reporting organization, including but not limited to, Experian, Equifax, and
14 Trans Union; and

15 D) Restraining and enjoining Defendants, any predecessor in interest to
16 Defendants and any successor in interest to Defendants, and any person acting for their
17 benefit or at their direction or instruction, including but not limited to, Experian, EquiFax,
18 and Trans Union, from continuing, maintaining or reporting any adverse or negative
19 report or information with respect to the Loan, Note & Trust Deed.

20 II.

21 **DEFINITIONS**

22 11) As used in this Complaint, the following definitions shall apply (the
23 "Definitions"):
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25
26
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1 A) The term "**Non-judicial Foreclosure Statutes**" means the statutes of this
2 State governing non-judicial foreclosures of real property secured loans.

3 B) The term "**TILA**" means the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j,
4 as amended. TILA, which took effect on July 1, 1969, is intended to promote the
5 informed use of consumer credit by requiring creditors to disclose credit terms and
6 costs, requiring additional disclosures for loans secured by consumers' homes, and
7 permitting consumers to rescind certain transactions that involve their principal
8 dwellings.
9

10 C) The term "**HOEPA**" means the Home Ownership and Equity Protection Act of
11 1994 which, inter alia, amended TILA by adding Section 129 of TILA, 15 U.S.C. § 1639,
12 and is implemented by, inter alia, Sections 226.31 and 226.32 of Regulation Z, 12
13 C.F.R. §§ 226.31 and 226.32. HOEPA, which took effect on October 1, 1995, provides
14 special protections for consumers who obtain high-rate or high-fee loans secured by
15 their principal dwellings by requiring creditors to provide certain material information at
16 least three days before the loan is consummated, prohibiting the use of certain loan
17 terms, and barring specified practices.
18
19

20 D) The term "**HOEPA mortgage loan**" means a consumer credit transaction
21 consummated on or after October 1, 1995, that is secured by the consumer's principal
22 dwelling, in which: (1) the annual percentage rate at consummation of the transaction
23 will exceed by more than 10 percentage points the yield on Treasury securities having
24 comparable periods of maturity to the loan maturity as of the 15th day of the month
25 immediately preceding the month in which the application for the extension of credit is
26 received by the creditor; or (2) the total points and fees payable by the consumer at or
27
28

1 before loan closing will exceed the greater of 8% of the total loan amount or \$400
 2 (adjusted annually by the Board of Governors of the Federal Reserve System ("FRB")
 3 on January 1 by the annual percentage change in the Consumer Price Index that was
 4 reported on June 1 of the preceding year), which is covered by HOEPA, pursuant to
 5 Section 129 of TILA, 15 U.S.C. § 1639, and Section 226.32 of Regulation Z, 12 C.F.R. §
 6 226.32. As used herein, the "total loan amount" is calculated as described in Section
 7 226.32(a)(1)(ii)-1 of the FRB Official Staff Commentary on Regulation Z, 12 C.F.R. §
 8 226.32 (a)(1)(ii)-1, Supp. 1.
 9

10 E) The term "**Regulation Z**" means the regulation the FRB promulgated to
 11 implement TILA and HOEPA, 12 C.F.R. 226, as amended. The term also includes the
 12 FRB Official Staff Commentary on Regulation Z, 12 C.F.R. 226, Supp. 1, as amended.
 13

14 F) The term "**Home**" means the primary residence located at 1220 Peterlynn St,
 15 San Diego, CA; APN: 631-190-14-00.
 16

17 G) The term "**TILA Rescission Notice**" means the written notice of rescission of
 18 the Loan, Note & Trust Deed, which rescission was made pursuant to and in
 19 compliance with the mandatory provisions of TILA, HOEPA & Reg Z.
 20

21 H) The terms "**Loan**", "**Note**" & "**Trust Deed**" refer to that certain consumer
 22 loan number 2000266764 or 1010216250 originated in connection with a refinancing of
 23 the Home as a residence, which Loan, Note & Trust Deed closed on December 12,
 24 2005 with such Trust Deed being recorded in the Records of the County Recorder of
 25 San Diego County, on December 28, 2005 as Instrument Number Book 2005-1112133
 26 Page 32862, specifying:
 27

28 Trustor: (Jose R Ortega)

VERIFIED COMPLAINT - 7

Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

1 Original Trustee: LANDAMERICA COMMONWEALTH

2
3
4 Original Beneficiary: MORTGAGE ELECTRONIC REGISTRATIONS SYSTEM, INC

5 Lender: NEW CENTURY MORTGAGE CORP

6 I) the term "**Lender**" means the original lender for the Loan, Note & Trust Deed.

7
8 J) The term "**Original Beneficiary**" means the original Beneficiary stated in the
9 Trust Deed.

10 K) The term "**Original Trustee**" means the original Trustee stated in the Trust
11 Deed.

12 L) The term "**Successor Trustee**" means the Trustee substituted for the Original
13 Trustee prior to or during the Foreclosure process.

14 M) The term "**Holder**" means the holder of the Loan, Note & Trust Deed at any
15 time as successor in interest to the Lender or Original Beneficiary.

16 N) The term "**Foreclosure**" means the non-judicial foreclosure commenced in
17 Connection with the Loan, Note & Trust Deed on the Home.

18 O) The term "**NOD**" means the Notice of Default recorded or to be recorded
19 against the Home in connection with the Foreclosure of the Loan, Note & Trust Deed, in
20 the Records of the County Recorder for San Diego County.

21 P) The term "**NOS**" means any Notice of Trustee's Sale recorded or to be
22 recorded against the Home in connection with the Foreclosure of the Loan, Note & Trust
23 Deed, in the Records of the County Recorder for San Diego County.
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1 Q) The term "**Foreclosure Sale**" means any foreclosure sale of the Home
2 conducted or to be conducted as part of the Foreclosure of the Loan, Note & Trust
3 Deed.

4 R) The term "**Trustee's Deed**" means any Trustee's Deed issued or to be
5 issued at the Foreclosure Sale purporting to transfer title to the Home to the Buyer at
6 the Foreclosure Sale.
7

8 ////

9 III.

10 **PARTIES & JURISDICTION**

11 12) Plaintiff Jose R Ortega is the lawful owner of the Home which is
12 Located within the jurisdiction of this Court.
13

14
15 13) Defendant NEW CENTURY MORTGAGE CORP is now, and at all
16 Relevant times mentioned herein have been a corporation with a place of business in
17 San Diego, CA and the Holder of the Loan, Note & Trust Deed set forth herein.
18

19 14) Plaintiff is ignorant of the true names and capacities of Defendants sued
20 herein as DOES 1-20, inclusive, and is informed and believes, and thereupon alleges
21 that, the Doe Defendants were participants in the actions and conduct set forth herein
22 below and were responsible for the injuries and damages to Plaintiff set forth herein,
23 and therefore sues these Defendants by such fictitious names. Plaintiff will seek leave
24 of the Court to amend this complaint to allege their true names and capacities when
25 ascertained.
26

27 15) Plaintiff is informed and believes, and thereupon alleges that:
28

1 A) Each of the Defendants named in this complaint was an agent, employee,
2 coventurer,
3 Partner, and/or officer of every other named Defendant, and were acting within the
4 course and scope of such agency and/or employment in taking the actions as
5 hereinafter alleged, with the knowledge and consent of their principal(s) and/or
6 employer(s).
7

8 B) Each of the Defendants named in this complaint aided and abetted one or more,
9 and/or each of the other Defendants in undertaking the actions and conduct set forth
10 herein below, and that such aiding and abetting was responsible for the injuries and
11 damages suffered by Plaintiff
12

13 As set forth herein below.
14

15 /////
16

17 IV.

18 A TILA LOAN RESCISSION NOTICE WAS SENT TO THE HOLDER
19 PURSUANT TO THE PROVISIONS OF TILA, HOEPA & REG Z
20 WHICH AUTOMATICALLY
21 RENDERED THE LOAN, NOTE & TRUST DEED VOID BY OPERATION OF
22 FEDERAL LAW
23 AND NO FURTHER PAYMENT OBLIGATIONS WERE DUE THEREUNDER
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1 16) The Home was refinanced pursuant to a consumer loan evidenced by
2 the Loan, Note & Trust Deed, which were at all times subject to the provisions of
3 TILA, HOEPA & Reg Z.

4 17) Rescission of the Loan, Note & Trust Deed under TILA, HOEPA &
5 Reg Z is provided by Section 1635 of TILA (15 U.S.C. § 1635), otherwise known as
6 Title 15 of the United States Code, Commerce And Trade, Chapter 41, Consumer
7 Credit Protection, Subchapter 1, Consumer Credit Cost Disclosure, Part B, Credit
8 Transactions, which states in pertinent part:
9

10 **"Sec. 1635. Right of rescission as to certain transactions**

11 (a) Disclosure of obligor's right to rescind

12 Except as otherwise provided in this section, in the case of any consumer credit
13 Transaction (including opening or increasing the credit limit for an open end
14 credit

15 plan) in which a security interest, including any such interest arising by operation
16 of law, is or will be retained or acquired in any property which is used as the
17 principal dwelling of the person to whom credit is extended, the obligor shall have
18 the right to rescind the transaction until midnight of the third business day
19 following the consummation of the transaction or the delivery of the information
20 and rescission forms required under this section together with a statement
21 containing the material disclosures required under this subchapter, whichever is
22 later, by notifying the creditor, in accordance with regulations of the Board, of his
23 intention to do so. The creditor shall clearly and conspicuously disclose, in
24 accordance with regulations of the Board, to any obligor in a transaction subject
25 to this section the rights of the obligor under this section. The creditor shall also
26 provide, in accordance with regulations of the Board, appropriate forms for the
27 obligor to exercise his right to rescind any transaction subject to this section.
28

23 **(a) Return of money or property following rescission**

24 When an obligor exercises his right to rescind under subsection (a) of this
25 section, he is not liable for any finance or other charge, **and any security**
26 **interest given by the obligor, including any such interest arising by**
27 **operation of law, becomes void upon such a rescission.** Within 20 days after
28 receipt of a notice of rescission, the creditor **shall return to the obligor any**
money or property given as earnest money, down payment, or otherwise,
and shall take any action necessary or appropriate to reflect the

1 **termination of any security interest created under the transaction.** If the
 2 creditor has delivered any property to the obligor, the obligor may retain
 3 possession of it. Upon the performance of the creditor's obligations under this
 4 Section, the obligor shall tender the property to the creditor, except that if return
 of the property in kind would be impracticable or inequitable, the obligor shall
 tender its reasonable value. Tender shall be made at the location of the property

5 Or at the residence of the obligor, at the option of the obligor. **If the creditor**
 6 **does not take possession of the property within 20 days after tender by the**
 7 **obligor, ownership of the property vests in the obligor without obligation**
 8 **on his part to pay for it.**

9 **(b) Time limit for exercise of right**

10 An obligor's right of rescission shall expire three years after the date of
 11 consummation of the transaction or upon the sale of the property, whichever
 12 occurs first, notwithstanding the fact that the information and forms required
 13 under this section or any other disclosures required under this part have not been
 14 delivered to the obligor, except that if (1) any agency empowered to enforce the
 15 provisions of this subchapter institutes a proceeding to enforce the provisions of
 16 this section within three years after the date of consummation of the transaction,
 17 (2) such agency finds a violation of this section, and (3) the obligor's right to
 rescind is based in whole or in part on any matter involved in such proceeding,
 then the obligor's right of rescission shall expire three years after the date of
 consummation of the transaction or upon the earlier sale of the property, or upon
 the expiration of one year following the conclusion of the proceeding, or any
 judicial review or period for judicial review thereof, whichever is later.

18 **(c) Rescission rights in Foreclosure**

19 **(1) In general**

20 Notwithstanding section 1649 of this title, and subject to the time period provided
 21 in subsection (f) of this section, in addition to any other right of rescission
 22 available under this section for a transaction, after the initiation of any judicial or
 23 non-judicial Foreclosure process on the primary dwelling of an obligor securing
 24 an extension of credit, the obligor shall have a right to rescind the transaction
 equivalent to other rescission rights provided by this section, if--

25 (A) a mortgage broker fee is not included in the finance charge in accordance
 26 with the laws and regulations in effect at the time the consumer credit transaction
 was consummated; or

27 (B) The form of notice of rescission for the transaction is not the appropriate form
 28 of written notice published and adopted by the Board or a comparable written

notice, and otherwise complied with all the requirements of this section regarding notice.

(d) Tolerance for disclosures

Notwithstanding section 1605(f) of this title, and subject to the time period provided in subsection (f) of this section, for the purposes of exercising any

rescission rights after the initiation of any judicial or non-judicial Foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$35 or is greater than the amount required to be disclosed under this subchapter.

(e) Right of recoupment under State law

Nothing in this subsection affects a consumer's right of rescission in recoupment Under State law.

(f) Applicability

This subsection shall apply to all consumer credit transactions in existence or Consummated on or after September 30, 1995.

g) Rescission of the Loan, Note & Trust Deed under TILA, HOEPA & Reg Z is governed by Section 226.15 of TILA (Reg Z) which states in pertinent part:

"§ 226.15 Right of rescission.

(a) Consumer's Right to Rescind.

(1)(i) Except as provided in paragraph (a) (1) (ii) of this section, in a credit plan in Which a security interest is or will be retained or acquired in a consumer's Principal dwelling, each consumer whose ownership interest is or will be subject To the security interest **shall have the right to rescind: each credit extension Made under the plan; the plan when the plan is opened; a security interest When added or increased to secure an existing plan; and the increase When a credit limit on the plan is increased.**

(ii) As provided in § 125(e) of the act, the consumer does not have the right to rescind each credit extension made under the plan if such extension is made in Accordance with a previously established credit limit for the plan.

(2) **To exercise the right to rescind, the consumer shall notify the creditor Of the rescission by mail,** telegram, or other means of written communication. **Notice is considered given when mailed,** or when filed for telegraphic Transmission, or, if sent by other means, when delivered to the creditor's Designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following the occurrence described in paragraph (a) (1) of this Section that gave rise to the right of rescission, delivery of the notice required by Paragraph (b) of this section, or delivery of all material disclosures, whichever Occurs last. **If the required notice and material disclosures are not delivered,**

The right to rescind shall expire three years after the occurrence giving rise To the right of rescission, or upon transfer of all of the consumer's interest in The property, or upon sale of the property, whichever occurs first. In the case of Certain administrative proceedings, the rescission period shall be extended in Accordance with § 125(f) of the act.

(4) When more than one consumer has the right to rescind, the exercise of the Right by one consumer shall be effective as to all consumers.

(h) ***Effects of Rescission.***

(1) When a consumer rescinds a transaction, the security Interest giving rise to the right of rescission becomes void, And the consumer shall not be liable for any amount, Including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the Creditor shall return any money or property that has been given to anyone In connection with the transaction and shall take any action necessary to Reflect the termination of the security interest.

(3) **If the creditor has delivered any money or property, the consumer may Retain possession until the creditor has met its obligation under paragraph (d) (2) Of this section. When the creditor has complied with that paragraph, the Consumer shall tender the money or property to the creditor or, where the Latter would be impracticable or inequitable, tender its reasonable value. At the Consumer's option, tender of property may be made at the location of the Property or at the consumer's residence. If the creditor does not take Possession of the money or property within 20 calendar days after the Consumer's tender, the consumer may keep it without further obligation."**

[Bold & Underline Added For Emphasis]

3) In full compliance with the requirements for Rescission under TILA and Reg Z, and within the three year period following the origination date of the Loan, as required by TILA and Reg Z, the Trustor under the Loan, Note & Trust Deed served a Notice of Loan Rescission which stated in pertinent part:

"This letter is to notify you that I hereby rescind and cancel the above Specified Loan, Note & Trust Deed undertaken in connection with the above Specified Property.

This notice of rescission (the "TILA Rescission Notice") is given for violations of and non-compliance with the provisions of:

- A) The Truth in Lending Act, 15 U.S.C. §§ 1601-1666j ("TILA"), and
- B) The Home Ownership and Equity Protection Act of 1994 ("HOEPA") Which, inter alia, amended TILA by adding Section 129 of TILA, 15 U.S.C. § 1639, and
- C) U. S. Treasury Regulation Z, 12 C.F.R. §§ 226.31 of HOEPA, and Treasury Regulation Z which implements and enforces the above laws.

Section 226.15 of TILA (Reg Z) states in pertinent part:

"§ 226.15 Right of rescission.

(a) *Consumer's Right to Rescind.*

(1)(i) except as provided in paragraph (a) (1) (ii) of this section, in a credit plan in Which a security interest is or will be retained or acquired in a consumer's Principal dwelling, each consumer whose ownership interest is or will be subject To the security interest shall have the right to rescind: each credit extension Made under the plan; the plan when the plan is opened; a security interest When added or increased to secure an existing plan; and the increase When a credit limit on the plan is increased.

(ii) As provided in § 125(e) of the act, the consumer does not have the right to Rescind each credit extension made under the plan if such extension is made in Accordance with a previously established credit limit for the plan.

(2) To exercise the right to rescind, the consumer shall notify the creditor Of the rescission by mail, telegram, or other means of written communication. Notice is considered given when mailed, or when filed for telegraphic Transmission, or, if sent by other means, when delivered to the creditor's Designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third Business day following the occurrence described in paragraph (a) (1) of this Section that gave rise to the right of rescission, delivery of the notice required by Paragraph (b) of this section, or delivery of all material disclosures, whichever

Occurs last. If the required notice and material disclosures are not delivered,

The right to rescind shall expire three years after the occurrence giving rise To the right of rescission, or upon transfer of all of the consumer's interest in The property, or upon sale of the property, whichever occurs first. In the case of Certain administrative proceedings, the rescission period shall be extended in Accordance with § 125(f) of the act.

(4) When more than one consumer has the right to rescind, the exercise of the Right by one consumer shall be effective as to all consumers.

(b) *Effects of Rescission.*

(1) When a consumer rescinds a transaction, the security Interest giving rise to the right of rescission becomes void, And the consumer shall not be liable for any amount, Including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the Creditor shall return any money or property that has been given to anyone In connection with the transaction and shall take any action necessary to Reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may Retain possession until the creditor has met its obligation under paragraph (d) (2) Of this section. When the creditor has complied with that paragraph, the Consumer shall tender the money or property to the creditor or, where the Latter would be impracticable or inequitable, tender its reasonable value. At the Consumer's option, tender of property may be made at the location of the Property or at the consumer's residence. If the creditor does not take Possession of the money or property within 20 calendar days after the Consumer's tender, the consumer may keep it without further obligation."

[Bold & Underline Added For Emphasis]

Your violations of the above laws include but are not limited to:

18) HOEPA DISCLOSURE VIOLATIONS

In the course and conduct of offering, making, acquiring, maintaining and continuing a HOEPA mortgage loan to me, you and your predecessors in interest violated, and continue to violate, the requirements of HOEPA, TILA and Regulation Z, including but not limited to:

A) Failing to disclose in writing the following required notice:
"You are not required to complete this agreement merely

Because you have received these disclosures or have signed A loan application. If you obtain this loan, the lender will have a Mortgage on your home. You could lose your home, and any Money you have put into it, if you do not meet your obligations Under the loan, in violation of Section 129(a) (1) of TILA, 15 U.S.C. § 1639(a) (1), and Section 226.32(c) (1) of Regulation Z, 12 C.F.R. § 226.32(c) (1);

B) Failing to disclose, or accurately disclose:

1. The annual percentage rate, in violation of Section 129(a) (2) of TILA, 15 U.S.C. § 1639(a) (2), and Section 226.32(c) (2) of Regulation Z, 12 C.F.R. § 226.32(c) (2);

2. The regular payment amount, in violation of Section 29(a) (2) of TILA, 15 U.S.C. § 1639(a) (2), and Section 226.32(c) (3) of Regulation Z, 12 C.F.R. § 226.32(c) (3);
And

3. Specified variable rate information, in violation of Section 129(a) (2) of TILA, 15 U.S.C. § 1639(a) (2), and Section 226.32(c) (4) of Regulation Z, 12 C.F.R. § 226.32(c) (4).

C) Failing to furnish the disclosures described above clearly and Conspicuously in writing at least three business days prior to Consummation of a HOEPA mortgage loan transaction, in Violation of Section 129(b) (1) of TILA, 15 U.S.C. § 1639(b) (1), And Section 226.31(b) and (c) (1) of Regulation Z, 12 C.F.R. § 226.31(b) and (c) (1).

19) PROHIBITED LOAN TERMS

In the course and conduct of offering, making, acquiring, maintaining and continuing a HOEPA mortgage loan to me, you and your predecessors in interest violated, and continue to violate, the requirements of HOEPA, TILA, and Regulation Z, including but not limited to, including a prohibited "prepayment penalty" provision, in violation of Section 129(c) of TILA, 15 U.S.C. § 1639(c), and Section 226.32(d)(6) of Regulation Z, 12 C.F.R. § 226.32(d)(6).

20) PROHIBITED ASSET BASED LENDING

In the course and conduct of offering, making, acquiring, maintaining And continuing a HOEPA mortgage loan to me, you and your Predecessors in interest violated, and continue to violate, the Requirements of HOEPA, TILA and Regulation Z, including but not

Limited to, extending such credit to me as a consumer based on the Consumer's collateral rather than considering the consumer's current And expected income, current obligations, and employment status to Determine whether the consumer will be able to make the scheduled Payments to repay the obligation, in violation of Section 129(h) of TILA, 15 U.S.C. § 1639(h), and Section 226.32(e) (1) of Regulation Z, 12 C.F.R. § 226.32(e) (1).

21) TILA DISCLOSURE VIOLATIONS

In the course and conduct of offering, making, acquiring, maintaining And continuing a HOEPA mortgage loan to me, you and your Predecessors in interest violated, and continue to violate, the Requirements of HOEPA, TILA and Regulation Z, including but not Limited to:

- A) Failing to make required TILA disclosures in writing before Consummation of a consumer credit transaction, in violation of Sections 121(a) and 128(b) (1) of TILA, 15 U.S.C. §§ 1631(a) And 1638(b) (1), and Sections 226.17(a) and (b) and 226.18 of Regulation Z, 12 C.F.R. §§ 226.17(a) and (b) and 226.18;
- B) Failing to disclose, or accurately disclose, the following Information:
 - 1. The identity of the creditor making the disclosures, in Violation of Section 128(a) (1) of TILA, 15 U.S.C. § 1638(a) (1), and Section 226.18(a) of Regulation Z, 12 C.F.R. § 226.18(a);
 - 2. The amount financed, in violation of Section 128(a) (2) Of TILA, 15 U.S.C. § 1638(a) (2), and Section 226.18(b) Of Regulation Z, 12 C.F.R. § 226.18(b);
 - 3. The finance charge, in violation of Sections 106 and 128(a) (3) of TILA, 15 U.S.C. §§ 1605 and 1638(a) (3), And Sections 226.4 and 226.18(d) of Regulation Z, 12 C.F.R. §§ 226.4 and 226.18(d);
 - 4. The annual percentage rate, in violation of Sections 107 and 128(a) (4) of TILA, 15 U.S.C. §§ 1606 And 1638(a) (4), and Sections 226.18(e) and 226.22 of

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Regulation Z, 12 C.F.R. §§ 226.18(e) and 226.22;

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5. The payment schedule, in violation of Section 128(a)
(6)
Of TILA, 15 U.S.C. § 1638(a) (6), and Section
226.18(g)
Of Regulation Z, 12 C.F.R. § 226.18(g);
6. The total of payments, in violation of Section 128(a)
(5)
Of TILA, 15 U.S.C. § 1638(a) (5), and Section
226.18(h)
Of Regulation Z, 12 C.F.R. § 226.18(h);
7. Whether or not a penalty may be imposed if the
Obligation is prepaid in full, in violation of Section
128(a) (11) of TILA, 15 U.S.C. § 1638(a) (11), and
Section 226.18(k) (1) of Regulation Z, 12 C.F.R.
§ 226.18(k) (1);
8. Any dollar or percentage charge that may be imposed
Before maturity due to a late payment, other than a
Deferral or extension charge, in violation of Section
128(a) (10) of TILA, 15 U.S.C. § 1638(a) (10), and
Section 226.18(l) of Regulation Z, 12 C.F.R.
§ 226.18(l); and
9. The fact that the creditor has or will acquire a security
Interest in the consumer's principal dwelling, in
violation
Of Section 128(a) (9) of TILA, 15 U.S.C. § 1638(a)
(9),
And Section 226.18(m) of Regulation Z, 12 C.F.R.
§ 226.18(m).

**As you are aware, this TILA Rescission Notice automatically renders the
Loan, Note & Trust Deed void by operation of Federal law, for any and all
purposes, as of its origination, and there are no further payment
obligations of the Borrower/Trustor:**

**"When a consumer rescinds a transaction, the security
Interest giving rise to the right of rescission becomes void,**

**And the consumer shall not be liable for any amount,
Including any finance charge.**

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Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

1 Within 20 calendar days after receipt of a notice of rescission, the
 2 creditor
 3 Shall return any money or property that has been given to anyone in
 4 Connection with the transaction and shall take any action necessary
 5 to
 6 Reflect the termination of the security interest."

7 In accordance with the provisions of the above laws, demand is hereby made that
 8 Within twenty days, you perform all of your obligations required and mandated by the
 9 Above cited laws pursuant to this Rescission, which obligations include delivering to?
 10 Me, within twenty days, the following:

11 1) A full and absolute reconveyance of the Trust Deed held by you (the
 12 "Trust
 13 Deed Reconveyance"); and

14 2) Payment in full of the amount of all costs, interests, fees, charges,
 15 interest and payments paid by me in connection with the Loan from the
 16 date of its origination through the date of this TILA Rescission Notice (the
 17 "Monetary Payment"). All of the preceding being referred to as the "TILA
 18 Rescission Notice".)

19 5) Under TILA, HOEPA & Reg Z, the TILA Rescission Notice applied and
 20 continues to apply to the Original Lender, and all Holders as successors in
 21 interest to the Loan, Note & Trust Deed, including Defendants.

22 6) The TILA Rescission Notice automatically rendered the Loan, Note & Trust
 23 Deed void by operation of these Federal laws, and "the consumer shall not be
 24 liable for any amount, including any finance charge."

25 7) As a result of the TILA Rescission Notice, there was no Loan, Note & Trust
 26 Deed legally in existence, all having been rendered automatically void by
 27 operation of Federal law under TILA, HOEPA & Reg Z.

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V.

VERIFIED COMPLAINT - 20

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DEFENDANTS FAILED TO COMPLY WITH
THEIR MANDATORY TILA RESCISSION OBLIGATIONS
BY FAILING TO DELIVER

REPAYMENT OF ALL MONEYS PAID UNDER & IN CONNECTION WITH THE LOAN
& NOTE

AND

A RECONVEYANCE OF THE TRUST DEED

22) The Holders of the Loan, Note & Trust Deed, were each and all required
By Federal law under TILA and Reg Z, to deliver, within twenty days of the date of the
TILA Rescission Notice:

- A) The Monetary Payment; and
- B) The Trust Deed Reconveyance.

All of the preceding being collectively referred to herein as **"Holder's Rescission Obligations"**, as follows:

"When an obligor exercises his right to rescind under subsection (a) of this section, he is not liable for any finance or other charge, **and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission.** Within 20 days after receipt of a notice of rescission, the creditor **shall return to the obligor any money or property given as earnest money, down payment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction.** If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this Section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it." [Section 1635 of TILA (15 U.S.C. § 1635)]

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[Bold & Underline Added For Emphasis]

23) The twenty day statutory period for compliance with the Holder's Rescission Obligations expired without delivery of the Monetary Payment and the Trust Deed Reconveyance.

24) Defendants failed to comply with and continue to fail to comply with the mandatory and non-negotiable Holder's Rescission Obligations under TILA, HOEPA & Reg Z pursuant to such TILA Rescission (the "**Defendants' TILA Rescission Failures**"), in that:

A) Defendants did not deliver the Monetary Payment within twenty days after the TILA Rescission Notice; and

B) Defendants did not "take any action necessary to reflect the termination of the security interest" (i.e. Defendants did not deliver a notarized Trust Deed Reconveyance) within twenty days after the TILA Rescission Notice.

VI.

DEFENDANTS HAVE THREATENED TO COMMENCE AND/OR HAVE COMMENCED

A WRONGFUL NONJUDICIAL FORECLOSURE OF

THE LEGALLY NON-EXISTENT LOAN, NOTE & TRUST DEED

IN VIOLATION OF

TILA, HOEPA & REG Z AND THE STATE NON-JUDICIAL FORECLOSURE STATUTES

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1
2 25) The TILA Rescission Notice automatically rendered the Loan, Note &
3 Trust Deed void, ab initio, by operation of Federal law under TILA, HOEPA & Reg
4 Z.

5 26) As a result, there was and is no Loan, Note & Trust Deed legally in
6 existence
7
8 Upon which a foreclosure can or could be commenced and concluded under the
9 State Non-judicial Foreclosure Statutes.

10 27) Rather than complying with the Holder's Rescission Obligations under TILA,
11 HOEPA & Reg Z as a result of the TILA Rescission Notice, instead, Defendants, in
12 violation of TILA, HOEPA & Reg Z, have threatened to commence and have
13 commenced a purported Foreclosure of the Loan, Note & Trust Deed on the Home, and
14 have threatened to conclude the Foreclosure through a Foreclosure Sale where a
15 Trustee's Deed would be issued.
16

17 28) Such Foreclosure is also in violation of the State Non-judicial Foreclosure
18 Statutes which require that there be a legally existing Loan, Note & Trust Deed upon
19 which to commence Foreclosure, and in the instant case, there was and is no Loan,
20 Note & Trust Deed legally in existence due to the TILA Rescission Notice.
21

22 29) As a result, Defendants have no legal standing or right to commence,
23 maintain and/or complete a Foreclosure and Foreclosure Sale of the Home under the
24 State Non-judicial Foreclosure Statutes, and **any such purported Foreclosure,**
25 **Foreclosure Sale and Trustee's Deed, will be and are illegal and prohibited by the**
26
27
28

1 mandatory provisions of TILA, HOEPA & Reg Z, and the State Non-judicial
2 Foreclosure Statutes, and will be null and void as a matter of law, ab initio.

3 VII.

4 CAUSES OF ACTION

5 FIRST CAUSE OF ACTION

6 DECLARATORY RELIEF

7 Against All Defendants

8
9
10 30) Plaintiff incorporates paragraphs 1 through 29 as if fully set forth herein.

11 31) Plaintiff contends that:

12 a) The TILA Rescission Notice automatically rendered the Loan, Note &
13 Trust Deed void ab initio by operation of Federal Law under TILA, HOEPA
& Reg Z, and as a result:

14 32) There is no Loan, Note & Trust Deed legally in existence; and

15 34) There are no further payment obligations under the Loan, Note & Trust Deed.

16 35) As a result of the preceding:

17 a) Defendants have no legal standing or right to commence or maintain a
18 Foreclosure of the Loan, Note & Trust Deed and Home; and

19 36) Any Foreclosure commenced, maintained or concluded by Defendants is barred

20 And prohibited by operation of Federal law under TILA, HOEPA & Reg Z, and by

21 Operation of the State Non-judicial Foreclosure Statutes, and would therefore be illegal

22 And void by operation of these laws; and

23
24 37) Defendants have no equitable or legal right to report or cause to be place into any
25 Credit report with any credit reporting bureau, any negative information concerning the
26 Loan, Note & Trust Deed.
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VERIFIED COMPLAINT - 24

Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

1 38) Plaintiff is informed and believes that Defendants contend the opposite of Plaintiff.

2 39) Therefore, an actual controversy exists between the parties concerning their

3 Respective rights and duties. A judicial declaration is appropriate under the

4 Circumstances to determine which party's contentions are correct.

5
6 40) Plaintiff demands judgment for a Declaration of the Court that:

7 a) The TILA Rescission Notice was timely served within three (3) years of
8 The date of origination of the Loan, Note & Trust Deed.

9 b) The TILA Rescission Notice automatically rendered the Loan, Note &
10 Trust Deed void ab initio by operation of Federal law under TILA and Reg
11 Z.

12 c) As a result of the TILA Rescission Notice, there was no Loan, Note &
13 Trust Deed legally in existence which could be foreclosed upon and there
14 could be no legal or valid foreclosure conducted under the State Non-
15 judicial Foreclosure Statutes.

16 d) As a result of the preceding, the Foreclosure was and is wrongful and
17 was barred by and conducted in violation of Federal law under TILA,
18 HOEPA & Reg Z, and in violation of the State Non-judicial Foreclosure
19 Statutes and is therefore void, halted, cancelled and set aside.

20 e) As a result of the preceding, any purported Foreclosure Sale conducted
21 or to be conducted in connection with, or to be conducted in connection
22 with, the wrongful and illegal Foreclosure, is equally void by operation of
23 law and is cancelled, reversed and set aside.

24 f) As a result of the preceding, any Trustee's Deed which may be issued
25 pursuant to such illegal and void Foreclosure and Foreclosure Sale is
26 equally void by operation of law and is reversed, set aside and canceled.

27 g) As a result of the preceding, the Trust Deed of record was previously
28 voided by the TILA Rescission Notice and is therefore canceled and
stricken from the records of the County Recorder of San Diego County.

h) As a result of the preceding, Defendants and their predecessors in
interest and their successors in interest, may not and cannot acquire or
perfect legal title to the Home and therefore have no legal standing to file,
maintain, continue or obtain judgment in any unlawful detainer case for

VERIFIED COMPLAINT - 25

Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

possession of the Home, and any unlawful detainer case which may be brought by, for or on behalf of Defendants and their predecessors in interest and their successors in interest, is null and void by operation of law; any and all orders and judgments which may be issued therein are null and void by operation of law and are recalled, set aside and vacated; and any judgment and writ of possession obtained therein are null and void and are recalled, set aside and vacated; and any such unlawful detainer case is set aside, vacated and dismissed with prejudice, all ab initio.

SECOND CAUSE OF ACTION

WRONGFUL FORECLOSURE

Against All Defendants

41) Plaintiff incorporates paragraphs 1 through 40 as if fully set forth herein.

42) Defendants knew or should have known that pursuant to the mandatory provisions of TILA, HOEPA & Reg Z, the Loan, Note & Trust Deed were rendered null and void ab initio, for all purposes, by operation of Federal law pursuant to the TILA Rescission Notice, and that there was no Loan, Note & Trust Deed legally in existence upon which to commence and conclude a Foreclosure, and that Defendants were therefore legally barred and prohibited from conducting a non-judicial Foreclosure of the Loan, Note & Trust Deed, by operation of Federal law pursuant to TILA, HOEPA & Reg Z, and by operation of the State Non-judicial Foreclosure Statutes.

43) Defendants nonetheless threatened to commence and/or have commenced, maintained, and have threatened to conclude and/or have concluded the Foreclosure and Foreclosure Sale, in violation of Federal law and the State Non-judicial Foreclosure Statutes.

1 44) As a direct and proximate result of the above-described actions and conduct
2 Constituting WRONGFUL FORECLOSURE, Plaintiff is entitled to judgment against
3 Defendants for Wrongful Foreclosure, and for judgment reversing, canceling, voiding,
4 setting aside and vacating any Foreclosure, Foreclosure Sale and Foreclosure
5 Trustee's Deed.
6

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9 **THIRD CAUSE OF ACTION**

10 **REVERSAL & CANCELLATION OF**

11 **ILLEGAL FORECLOSURE BARRED BY OPERATION OF FEDERAL & STATE LAW**

12 **Against All Defendants**
13

14 45) Plaintiff incorporates paragraphs 1 through 44 as if fully set forth herein.
15

16 46) Plaintiff timely and fully complied with all of the provisions of TILA, HOEPA & Reg
17 Z for Rescission of the Loan, Note & Trust Deed through the TILA Rescission Notice.

18 47) Defendants failed to comply with the mandatory requirements of TILA, HOEPA &
19 Reg Z in response to the TILA Rescission Notice.
20

21 48) The Loan, Note & Trust Deed were rendered void by operation of Federal law
22 Pursuant to the TILA Rescission Notice under TILA, HOEPA & Reg Z, and there was no
23 Trust Deed legally in existence upon which Defendants could legally foreclose.

24 49) As a result, the preceding, the purported Foreclosure, NOD, NOS, Foreclosure
25 Sale and Trustee's Deed were at all times null and void by operation of Federal law
26 pursuant to TILA, HOEPA & Reg Z, and were and are of no legal force or effect
27 whatsoever.
28

VERIFIED COMPLAINT - 27

Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

1 50) As a direct and proximate result of the preceding, Plaintiff is entitled to judgment
2 Against Defendants, reversing, canceling, voiding, setting aside and vacating the
3 purported
4 Foreclosure, NOD, NOS, Foreclosure Sale and Trustee's Deed.
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10 **FOURTH CAUSE OF ACTION**
11 **CANCELLATION OF INSTRUMENTS**
12 **Against All Defendants**
13
14

15 51) Plaintiff incorporates paragraphs 1 through 50 as if fully set forth herein.

16 52) Plaintiff timely and fully complied with all of the provisions of TILA, HOEPA & Reg Z
17 For Rescission of the Loan, Note & Trust Deed pursuant to the TILA Rescission Notice.
18

19 53) Defendants failed to comply with the mandatory requirements of TILA, HOEPA &
20 Reg Z in response to the TILA Rescission Notice.

21 54) The Loan, Note & Trust Deed were AUTOMATICALLY RENDERED VOID by
22 Operation of Federal law pursuant to the TILA Rescission Notice under TILA, HOEPA &
23 Reg Z.
24

25 55) As a result of the preceding, and there was no Loan, Note & Trust Deed legally in
26 existence upon which Defendants could legally foreclose and any such Foreclosure,
27 including any NOD, NOS, Foreclosure Sale and Trustee's Deed were barred and
28

VERIFIED COMPLAINT - 28

Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

1 prohibited by operation of Federal law under TILA, HOEPA & Reg Z, and were barred
2 and prohibited by operation of the State Non-judicial Foreclosure Statutes, and are
3 therefore void as a matter of law and Plaintiff is entitled to have such NOD, NOS,
4 Foreclosure, Foreclosure Sale & Trustee's Deed cancelled from the records of the
5 County Recorder for San Diego County

6 56) Further, Defendants failed to deliver the Trust Deed Reconveyance as mandated
7 And required by TILA, HOEPA & Reg Z following the TILA Rescission Notice, and the
8 Trust Deed improperly and illegally remains of record in the records of the County
9 Recorder for San Diego County.
10

11 57) Pursuant to the TILA Rescission Notice served in compliance with TILA, HOEPA &
12 Reg Z, Plaintiff is entitled to have the Trust Deed removed from the records of the
13 County Recorder for San Diego County.
14

15 58) As a direct and proximate result of the preceding, Plaintiff is entitled to judgment:

16 a) Reversing, vacating and canceling any NOD, NOS, Foreclosure,
17 Foreclosure Sale and Trustee's Deed recorded in the records of the County Recorder
18 for San Diego County in connection with the Loan, Note & Trust Deed.
19

20 b) Cancelling the recorded Trust Deed of record the records of the County
21 Recorder for San Diego County which was previously rendered void by operation of
22 Federal law pursuant to TILA, HOEPA & Reg Z.
23
24

25 **FIFTH CAUSE OF ACTION**

26 **TEMPORARY RESTRAINING ORDER**

27 **PRELIMINARY & PERMANENT INJUNCTION**
28

VERIFIED COMPLAINT - 29

Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

Against All Defendants

59) Plaintiff incorporates paragraphs 1 through 58 as if fully set forth herein.

60) As a result of the preceding, Plaintiff is entitled to judgment for issuance of a Temporary Restraining Order, a Preliminary Injunction, and a Permanent Injunction:

a) Restraining and enjoining Defendants, any predecessor in interest to

b) Defendants and any successor in interest to Defendants, and any person acting for their benefit or at their direction or instruction:

61. from asserting or continuing to assert any interest in and to the Home or the Loan, Note & Trust Deed; and

62. From continuing, maintaining or concluding any Foreclosure, including but not limited to, holding and concluding any Foreclosure Sale and issuing any Trustee's Deed pursuant to any Foreclosure Sale; and

63. From attempting to file, maintain, or continue, and from filing, maintaining, or Continuing and unlawful detainer action for possession of the Home, and from attempting to obtain and/or obtaining any orders and/or judgment, in any unlawful detainer action for possession of the Home; and

64) Restraining and enjoining Defendants, any predecessor in interest to Defendants and any successor in interest to Defendants, and any person acting for their benefit or at their direction or instruction, including but not limited to, any law enforcement agency or sheriff's department, from enforcement of any orders or judgment obtained in any such unlawful detainer action; and

65) Restraining and enjoining Defendants, any predecessor in interest to Defendants

VERIFIED COMPLAINT - 30

Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

and any successor in interest to Defendants, and any person acting for their benefit or at their direction or instruction, from reporting, maintaining, or continuing any adverse or negative report or information with respect to the Loan, Note & Trust Deed to any credit reporting organization, including but not limited to, Experian, Equifax, and Trans Union; and

66) Restraining and enjoining Defendants, any predecessor in interest to Defendants And any successor in interest to Defendants, and any person acting for their benefit or at their direction or instruction, including but not limited to, Experian, Equifax, and Trans Union, from continuing, maintaining or reporting any adverse or negative report or information with respect to the Loan, Note & Trust Deed.

////

WHEREFORE, PLAINTIFF PRAYS:

1) ON THE FIRST CAUSE OF ACTION: DECLARATORY RELIEF

Against All Defendants:

A Declaration from the Court that:

A) The TILA Rescission Notice was timely served within three (3) years of the date of origination of the Loan, Note & Trust Deed.

B) The TILA Rescission Notice automatically rendered the Loan, Note & Trust Deed void ab initio by operation of Federal law under TILA and Reg Z.

C) As a result of the TILA Rescission Notice, there was no Loan, Note & Trust Deed legally in existence which could be foreclosed upon and there could be no legal or valid foreclosure conducted under the State Non-judicial Foreclosure Statutes.

VERIFIED COMPLAINT - 31

Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

1 D) As a result of the preceding, the Foreclosure was and is wrongful and was
2 barred by and conducted in violation of Federal law under TILA, HOEPA & Reg Z, and
3 in violation of the State Non-judicial Foreclosure Statutes and is therefore void, halted,
4 Cancelled and set aside.

5 E) As a result of the preceding, any purported Foreclosure Sale conducted or
6 to be conducted in connection with, or to be conducted in connection with, the wrongful
7 And illegal Foreclosure, is equally void by operation of law and is cancelled, reversed
8 And set aside.

9 F) As a result of the preceding, any Trustee's Deed which may be issued
10 pursuant to such illegal and void Foreclosure and Foreclosure Sale is equally void by
11 operation of law and is reversed, set aside and canceled.

12 G) As a result of the preceding, the Trust Deed of record was previously
13 voided by the TILA Rescission Notice and is therefore canceled and stricken from the
14 records of the County Recorder of San Diego County.

15 H) As a result of the preceding, Defendants and their predecessors in
16 interest and their successors in interest, may not and cannot acquire or perfect legal title
17 to the Home and therefore have no legal standing to file, maintain, continue or obtain
18 judgment in any unlawful detainer case for possession of the Home, and any unlawful
19 detainer case which may be brought by, for or on behalf of Defendants and their
20 Predecessors in interest and their successors in interest, is null and void by operation
21 of law; any and all orders and judgments which may be issued therein are null and void
22 by operation of law and are recalled, set aside and vacated; and any judgment and writ
23 of possession obtained therein are null and void and are recalled, set aside and
24
25
26
27
28

1 vacated; and any such unlawful detainer case is set aside, vacated and dismissed with
2 prejudice, all ab initio.
3
4
5
6
7

8 **2) ON THE SECOND CAUSE OF ACTION: WRONGFUL FORECLOSURE**
9 **Against All Defendants**
10

11 Judgment that:

12 A) Any Foreclosure in connection with the Loan, Note & Trust Deed was
13 barred and prohibited by operation of Federal law under TILA, HOEPA & Reg Z,
14 and the State Non-judicial Foreclosure Statutes and was and is therefore void as
15 a matter of law; and
16

17 B) Any Foreclosure, Notice of Default, Notice Of Trustee's Sale, Foreclosure
18 Sale & Trustee's Deed in connection with the Loan, Note & Trust Deed
19 constituted Wrongful Foreclosure; and
20

21 C) The Notice of Default, Foreclosure, Notice of Trustee's Sale, Foreclosure
22 Sale, and Trustee's Deed in connection with the Loan, Note & Trust Deed were
23 and are void as a matter of law and are set aside, vacated, cancelled and
24 declared null and void.
25

26 **3) ON THE THIRD CAUSE OF ACTION: REVERSAL & CANCELLATION OF**
27 **ILLEGAL**
28

**FORECLOSURE SALE BARRED BY OPERATION OF FEDERAL LAW &
STATE LAW**

Against All Defendants

Judgment reversing, canceling, voiding and setting aside any Notice of Default, Foreclosure, Notice of Trustee's Sale, Foreclosure Sale, and Trustee's Deed in connection with the Loan, Note & Trust Deed.

4) ON THE FOURTH CAUSE OF ACTION: CANCELLATION OF INSTRUMENTS

Against All Defendants

Judgment:

A) Vacating and canceling any NOD, NOS, Foreclosure, Foreclosure Sale and Trustee's Deed recorded in the records of the County Recorder for San Diego County in connection with the Loan, Note & Trust Deed; and

B) Cancelling the recorded Trust Deed of record the records of the County Recorder for San Diego County which was previously rendered void by operation of Federal law pursuant to TILA, HOEPA & Reg Z.

**5) ON THE FIFTH CAUSE OF ACTION: TEMPORARY RESTRAINING ORDER;
PRELIMINARY & PERMANENT INJUNCTION.**

Against All Defendants:

Issuance of a Temporary Restraining Order, a Preliminary Injunction, and a
Permanent
Injunction:

1 A) Restraining and enjoining Defendants, any predecessor in interest to
2 Defendants and any successor in interest to Defendants, and any person
3 acting for their benefit or at their direction or instruction:

4 1. from asserting or continuing to assert any interest in and to the Home or
5 the Loan,

6 Note & Trust Deed; and

7 2. From continuing, maintaining or concluding any Foreclosure, including but
8

9
10 not limited to, holding and concluding any Foreclosure Sale and issuing any
11 Trustee's Deed pursuant to any Foreclosure Sale; and

12 3. from attempting to file, maintain, or continue, and from filing, maintaining,
13 or continuing and unlawful detainer action for possession of the Home, and from
14 Attempting to obtain and/or obtaining any orders and/or judgment, in any
15 unlawful
16

17 Detainer action for possession of the Home; and
18

19
20 B) Restraining and enjoining Defendants, any predecessor in interest to
21 Defendants and any successor in interest to Defendants, and any person acting
22 for their benefit or at their direction or instruction, including but not limited to, any
23 law enforcement agency or sheriff's department, from enforcement of any orders
24 or judgment obtained in any such unlawful detainer action; and
25
26
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1 C) Restraining and enjoining Defendants, any predecessor in interest to
2 Defendants and any successor in interest to Defendants, and any person acting
3 for their benefit or at their direction or instruction, from reporting, maintaining, or
4 continuing any adverse or negative report or information with respect to the Loan,
5 Note & Trust Deed to any credit reporting organization, including but not limited
6 to, Experian, Equifax, and Trans Union; and
7

8
9 D) Restraining and enjoining Defendants, any predecessor in interest to
10 Defendants and any successor in interest to Defendants, and any person acting
11 For their benefit or at their direction or instruction, including but not limited to,
12 Experian, Equifax, and Trans Union, from continuing, maintaining or reporting
13 any adverse or negative report or information with respect to the Loan, Note &
14 Trust Deed.
15

16 **6) ON ALL CAUSES OF ACTION HEREINABOVE:**

- 17 A) For cost of suit and all legal expenses and costs incurred herein, including
18 but not limited to, attorney's fees; and
19
20 B) For interest according to law; and
21
22 C) For such other and further relief as the Court may deem just and proper.

23 DATE: August 30, 2009

respectfully submitted,

24
25 Jose R Ortega
26 Plaintiff in Pro Per
27
28

EXHIBIT A1-A16

CERTIFICATION OF SERVICE

NOTICE AND DEMAND FOR TRUSTEE TERMINATION AND SUCCESSOR

TRUSTEE APPOINTMENT

NOTICE AND DEMAND FOR BENEFICIARY TERMINATION AND SUCCESSOR

BENEFICIARY APPOINTMENT

ACKNOWLEDGEMENT

NOTICE OF RESCISSION OF SIGNATURES

NOTICE OF COPYRIGHT NOTICE TO CEASE AND DESIST

NOTICE OF INTENT TO PRESERVE INTEREST

INTERROGATORY

NOTICE-FILING OF CRIMINAL CHARGE

AFFIDAVIT AND CERTIFICATION OF SERVICE

AFFIDAVIT OF DENIAL OF CORPORATE STATUS

HOLD HARMLESS AND INDEMNITY AGREEMENT-074704447-HHIA

NOTICE OF PROPRIETARY RIGHT

ADMINISTRATIVE NOTICE AND DEMAND

VERIFIED COMPLAINT - 37

Jose R Ortega, Vs New century Mortgage Corp, San Diego Superior Court

CM-011

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, telephone number, and address): Jose R Ortega 1042 Red Granite Rd Chula Vista, CA 91913 TELEPHONE NO.: (619) 947-6618 FAX NO.:		FOR COURT USE ONLY CIVIL 11/05/09 P 3:17
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input checked="" type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649		
CASE NAME:		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2009-00098974-CU-WE-CTL JUDGE: DEPT:

Items 1-5 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:
- | | | |
|--|--|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (38)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input checked="" type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input checked="" type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|--|---|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Type of remedies sought (check all that apply):
- | | | |
|--------------------------------------|--|---|
| a. <input type="checkbox"/> monetary | b. <input checked="" type="checkbox"/> nonmonetary; declaratory or injunctive relief | c. <input checked="" type="checkbox"/> punitive |
|--------------------------------------|--|---|
4. Number of causes of action (specify): **4**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date:

Jose R Ortega

(TYPE OR PRINT NAME)

Jose R Ortega

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

EXHIBIT 2

JNTADMN

**U.S. Bankruptcy Court
District of Delaware (Delaware)
Bankruptcy Petition #: 07-10419-KJC**

Date filed: 04/02/2007

Assigned to: Kevin J. Carey
Chapter 11
Voluntary
Asset

Debtor**New Century Mortgage Corporation**

18400 Von Karman Ave.

Irvine, CA 92612

Tax ID / EIN: 93-1195257

*fka***JBE Mortgage Corporation***dba***New Century Corporation***dba***NCMN Mortgage Corporation***dba***New Century Mortgage Ventures, LLC**

Tax ID / EIN: 71-0973199

represented by **Mark D. Collins**

Richards Layton & Finger

One Rodney Square

PO Box 551

Wilmington, DE 19899

302 651-7531

Fax : 302-651-7701

Email: collins@RLF.com

U.S. Trustee**United States Trustee**

844 King Street, Room 2207

Lockbox #35

Wilmington, DE 19899-0035

302-573-6491

Filing Date	#	Docket Text
04/02/2007	<u>1</u>	Chapter 11 Voluntary Petition . Fee Amount \$1039. Filed by New Century Mortgage Corporation. (Collins, Mark) (Entered: 04/02/2007)
04/02/2007	<u>2</u>	Motion for Joint Administration <i>Motion of Debtors and Debtors in Possession for an Order Directing Joint Administration of Related Chapter 11 Cases Filed By New Century Mortgage Corporation</i> (Collins, Mark) (Entered: 04/02/2007)
		Receipt of filing fee for Voluntary Petition (Chapter 11)(07-

04/02/2007	3	10419) [misc,volp11a] (1039.00). Receipt Number 2887390, amount \$1039.00. (U.S. Treasury) (Entered: 04/02/2007)
04/02/2007		Judge Kevin J. Carey added to case (GVW,) (Entered: 04/02/2007)

PACER Service Center			
Transaction Receipt			
10/29/2009 18:32:45			
PACER Login:	wf0265	Client Code:	
Description:	Docket Report	Search Criteria:	07-10419-KJC Fil or Ent: filed From: 4/2/2007 To: 4/2/2007 Doc From: 0 Doc To: 99999999 Term: included Format: html
Billable Pages:	1	Cost:	0.08

EXHIBIT 3



Superior Court of California, County of San Diego

[Case Search Home](#) [Previous Page](#) [New Case Number Search](#) [New Party Name Search](#) [Printer-Friendly Version \(All Entries\)](#) [Help](#)

Register of Actions

THE INFORMATION IN THIS REGISTER OF ACTIONS IS PROVIDED AS IS, WITHOUT WARRANTY BY THE SAN DIEGO SUPERIOR COURT AS TO CONTENT OR ACCURACY OF THE INFORMATION.

THE ENTRY DATE ON THE REGISTER OF ACTIONS MAY NOT ALWAYS REFLECT THE ACTUAL FILING DATE OF A DOCUMENT AND NOT ALL DOCUMENTS FILED WITH THE COURT ARE LISTED ON THE REGISTER OF ACTIONS. IT IS RECOMMENDED THAT USERS REFER TO THE CASE FILE FOR CONFIRMATION.

Case Number:	37-2009-00098974-CU-WE-CTL	Date Filed:	09/23/2009
Case Title:	Jose R Ortega vs. New Century Mortgage Corp	Case Status:	Pending
Case Category:	Civil - Unlimited	Location:	Central
Case Type:	Wrongful Eviction	Judicial Officer:	John S. Meyer
Case Age:	36 days	Department:	
Next Event Type:		Next Event Date:	

Display: [All Entries](#) [Filing Information Only](#) [Scheduling Information Only](#)

<u>Entry Date</u>	Short/Long Entry	Filed By
10/14/2009	Declaration - Other (OF nONMONETARY sTATUS) filed by Quality Loan Service Corp.	Quality Loan Service Corp (Defendant)
09/23/2009	Case assigned to Judicial Officer Meyer, John.	
09/23/2009	Request to Waive Court Fees filed by Ortega, Jose R.	Ortega, Jose R (Plaintiff)
09/23/2009	Civil Case Cover Sheet filed by Ortega, Jose R.	Ortega, Jose R (Plaintiff)
09/23/2009	Original Summons filed by Ortega, Jose R.	Ortega, Jose R (Plaintiff)
09/23/2009	Complaint filed by Ortega, Jose R.	Ortega, Jose R (Plaintiff)

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Jose R. Ortega

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) **BLM**

Jose R. Ortega, 1042 Red Granite Road,
Chula Vista, CA 91813 (619) 947-6618

DEFENDANTS

NEW CENTURY MORTGAGE CORP., et al.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED. BY 10/20/09

Attorneys (If Known)

Wright, Finlay & Zak LLP, 4665 MacArthur Court, Suite 280
Newport Beach, CA 92660 (949) 477-5050

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input checked="" type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. §§ 1601-1666j, 15 U.S.C. § 1639, 12 C.F.R. 226.31 and 12 C.F.R. 226.32

Brief description of cause:

Truth in Lending Act, Home Ownership and Equity Protection Act, Federal Reserve, Regulation Z

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

Unknown

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/05/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

6991

AMOUNT

350.00

APPLYING IFP

JUDGE

MAG. JUDGE

MS 11/5/09

CR

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS006991
Cashier ID: msweeney
Transaction Date: 11/05/2009
Payer Name: SAN DIEGO LEGAL SUPPORT SVCS

CIVIL FILING FEE
For: ORTEGA V NEW CENTURY CORP
Case/Party: D-CAS-3-09-CV-002487-001
Amount: \$350.00

CHECK
Check/Money Order Num: 83831
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.